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September 26, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration
CC Docket No. 00-249
Response to Verizon July 29 Letter

Dear Ms. Dortch:

Cox Virginia Telcom, Inc. ("Cox"), by its attorneys, hereby submits this response to the July 29, 2003 letter (the "July 29 Letter") of Karen Zacharia, counsel to Verizon Virginia, Inc. ("Verizon"), in the above-referenced proceeding.[1] The Commission should reject the July 29 Letter on both procedural and substantive grounds.[2] The July 29 Letter merely repeats claims Verizon already has raised, and fails to provide any rationale that would warrant reversal of the Commission's decision regarding reciprocal compensation for virtual NXX traffic in the *Non-*

[1] Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, CC Docket No. 00-249. Cox is filing a motion for leave to submit this response on this date.

[2] Cox notes that the July 29 Letter continues Verizon's pattern of ignoring the Commission rules and procedures so as to inflict the maximum level of inconvenience on the other parties to this proceeding. As with several of its earlier submissions, Verizon did not seek leave to file the July 29 Letter, though the pleading cycle has long since been closed. This follows Verizon's earlier attempts to enter new evidence in the record without any justification for its tardiness. *See, e.g.*, Letter from J.G. Harrington to Marlene H. Dortch, CC Docket No. 00-249, dated March 25, 2003; Opposition of Cox Virginia Telcom, Inc., CC Docket No. 00-249 at 15-17, 18-19 (filed September 10, 2002), Motion to Strike the Declaration of William Munsell and Other Inappropriate New Matter, CC Docket No. 00-249 (filed September 10, 2002).

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Cost Order.[3] Nothing in the Commission's brief in the *Mountain Communications* appeal or in the state commission decisions Verizon cites obviates Verizon's failure to present any evidence that its proposed resolution of the virtual NXX issue could be implemented.[4] As the Commission recognized in the *Non-Cost Order*, Verizon failed entirely to present any evidence demonstrating that its proposal for Issue I-6 could be implemented. Accordingly, the Commission made the only decision supported by the record. Nothing Verizon has submitted since the record closed presents any reason to revisit that conclusion.

In the July 29 Letter, Verizon renews its misplaced reliance on the Commission's decisions in *Mountain Communications, Inc*.[5] Verizon now argues that its position on the virtual NXX issue is supported by the Commission's brief in the appeal of those decisions.[6] In fact, the FCC's brief only further undermines Verizon's argument by demonstrating that the facts and policies underlying *Mountain Communications* make the case irrelevant to the Commission's decision on the virtual NXX issue.

As Cox previously explained, *Mountain Communications* addressed compensation for facilities used by paging companies to provide their customers with wide area calling. Wide area calling is a type of service that is very similar to traditional ILEC FX telephone service in that it uses numbering assignment in combination with dedicated transport facilities to enable customers to avoid toll charges on interLATA calls. In its brief, the FCC described a two-part test for determining whether an interconnection arrangement constitutes a wide area calling service entitling a LEC to collect transport charges for the use of the dedicated facilities. The first element of that test is that the arrangement must involve optional services that "'are not

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[3] Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration, Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., *Memorandum Opinion and Order*, CC Docket Nos. 00-218, 00-249, 00-251, DA No. 02-0731 (Wireline Comp. Bur.) (rel. July 17, 2002) (the "*Non-Cost Order*")

[4] *See* Brief for Respondents, *Mountain Communications, Inc. v. FCC*, No. 02-1255 (D.C. Cir. filed June 19, 2003) (the "FCC Brief")

[5] *See* Mountain Communications, Inc. v. Qwest Communications International, Inc., *Order*, 17 FCC Rcd 2091 (2002), *aff'd*, *Order on Review*, 17 FCC Rcd 15135 (2002).

[6] *See Mountain Communications, Inc. v. FCC*, No. 02-1255 (D.C. Cir. filed June 19, 2003).

necessary for interconnection or for the provision of . service ""[7] Virtual NXX service, however, makes use only of facilities that are entirely necessary for the provision of service. Indeed, the record in this proceeding shows that virtual NXX traffic is routed over local interconnection trunks and is indistinguishable from other local traffic traversing those same trunks Unlike wide area calling arrangements, virtual NXX does not increase Verizon's transport or interconnection costs

Moreover, the Commission's brief only reinforces Cox's contention that the more instructive case for resolving Issue I-6 is *TSR Wireless*.[8] Verizon is essentially trying to shift costs to Cox for virtual NXX traffic even though the demands on Verizon's network for virtual NXX traffic are no different than those made by any other intraLATA traffic Verizon's effort to shift costs for that traffic can only be seen as the type of improper charge classification outlawed by *TSR Wireless* Accordingly, the FCC's brief reveals that virtual NXX is not analogous to the wide area calling arrangements addressed in *TSR Wireless* and *Mountain Communications*, and the policies underlying those decisions are of no help to Verizon's request for reconsideration of the Commission's decision on Issue I-6[9]

Moreover, Verizon's continued citation to state commission proceedings addressing the virtual NXX traffic issue merely tells the commission what it already knows: some state commissions have agreed with Verizon that virtual NXX traffic cannot be subject to reciprocal compensation, while others have disagreed Even on this point, however, it should be noted that very few of the state commissions Verizon has cited have adopted the combination of positions that Verizon advocated in this arbitration Most have adopted a bill and keep regime for virtual NXX traffic, they have not required that virtual NXX traffic be subject to ILEC access charges or distance sensitive transport rates More importantly, however, state commissions can be of very little help to the FCC in interpreting its own rules, which is one of the FCC's fundamental tasks and core specialties If the Commission concludes, as it should, that its initial resolution of the virtual NXX issue comports with its own rules, the contrary opinion of the several state commissions is irrelevant

The July 29 Letter also further underscores Verizon's misunderstanding of the purpose of this arbitration Verizon's reliance on *Mountain Communications* and the state commissions it cites indicates that Verizon considers this proceeding to be akin to a rulemaking proceeding. To the contrary, arbitrations must be based on sound policy, but also must be consistent with the factual record that is placed before the arbitrator. Toward that end, the FCC and the parties participated in a lengthy proceeding that included a full opportunity for the airing of all evidence

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[7] *See* FCC Brief at 21 (quoting TSR Wireless, LLC v. US West Communications, Inc., *Order*, 15 FCC Rcd 11166 (2000), *affirmed* Qwest Corp v. FCC, 252 F.3d 462 (D.C. Cir. 2001) ("*TSR Wireless*")

[8] The FCC Brief discusses this case at length at pages 27-30

[9] Indeed, both *TSR Wireless* and *Mountain Communications* held that the wireless provider is entitled to reciprocal compensation, which is contrary to the result Verizon seeks here.

on the virtual NXX issue The Commission fairly determined the virtual NXX issue in the *Non-Cost Order* by choosing the resolution of Issue 1-6 that (1) mirrors the requirements of the Commission's rules to the extent that the parties demonstrated themselves technically capable, and (2) ensures smooth long-term implementation. The July 29 Letter fails to show that the Commission's decision was in error in any respect. Verizon's demand that virtual NXX traffic be rated by the geographical end points is a "solution" that solves nothing, but only sows the ground for future disputes

In this respect, the experience of the Florida Commission is instructive. The Florida Commission initially addressed the virtual NXX issue in a rulemaking proceeding, finding that calls should be rated based on geographic end points, rather than NXX codes.[10] It left to the carriers, however, the task of agreeing upon a compensation scheme for such traffic.[11] Predictably, the carriers were unable to agree on a billing regime, and the Florida Commission was forced to address the issue in the arbitration rulings cited by Verizon.[12] In belatedly proposing that the Commission require the parties to collaborate on traffic studies and virtual NXX billing issues (while continuing to ignore other types of traffic with end points that cannot be identified), Verizon is asking the FCC to go down the same path.[13] This course virtually guarantees that the parties will come before the Commission again and again to resolve petty disputes over the logistics of traffic studies and other associated "cooperative" endeavors to make Verizon's proposal a reality. The FCC has neither the time nor the resources to deal with these types of day-to-day disputes, and it must make its decisions with its resource limitations in mind

Verizon's persistent post-decision attempts to cobble together a case on the virtual NXX issue based on late-filed and irrelevant new evidence and inapposite case law have wasted the FCC's and the parties' time and resources Since the record in this proceeding closed, no relevant facts have changed, and Verizon still has provided no evidence of a workable plan to implement its proposed resolution of the Virtual NXX issue Like its previous post-decision submissions, the July 29 Letter simply retreads familiar ground, adding no new relevant law or

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[10] *See Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order No. PSC-02-1248-FOF-TP, Docket No. 000075-TP (September 10, 2002).

[11] *See id*

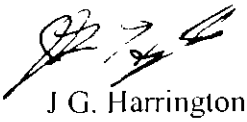
[12] *See Petition by Global NAPs, Inc for Arbitration Pursuant to 47 U.S C 252(b) of Interconnection Rates, Terms and Conditions with Verizon Florida Inc.*, Order No PSC-03-0805-FOF-TP (July 9, 2003); *Petition for Arbitration of Unresolved Issues in Negotiation of Interconnection Agreement with Verizon Florida, Inc by US LEC of Florida, Inc.*, Order No. PSC-03-0762-FOF-TP (June 25, 2003).

[13] *See* Cox Opposition to Verizon Petition for Reconsideration at 17-18; Tr. at 1811-12 (Pitterle) (carriers cannot determine actual beginning and end points of calls to leaky PBXs, LANs, and certain other types of lines)

evidence Accordingly, the Commission should reject the July 29 Letter and affirm its decision on the virtual NXX issue

Please inform us if any questions should arise in connection with this letter.

Respectfully submitted,



J G. Harrington
Jason E. Rademacher

Counsel to Cox Virginia Telcom, Inc

cc As per attached service list

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 26th day of September, 2003, copies of the foregoing "Response to Verizon July 29 Letter" were served as follows:

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